

# SECURITIES AND EXCHANGE COMMISSION

## 17 CFR Part 240

[Release No. 34-84225; File No. S7-21-18]

RIN 3235-AM47

### Amendment to Single Issuer Exemption for Broker-Dealers

**AGENCY:** Securities and Exchange Commission (“Commission”).

**ACTION:** Proposed rule.

**SUMMARY:** The Commission is proposing an amendment to the exemption provisions in the broker-dealer annual reporting rule under the Securities Exchange Act of 1934 (“Exchange Act”). The amendment would provide that a broker-dealer is not required to engage an independent public accountant to certify the broker-dealer’s annual reports if, among other things, the securities business of the broker-dealer has been limited to acting as broker (agent) for a single issuer in soliciting subscriptions for securities of that issuer.

**DATES:** Comments should be received on or before October 29, 2018.

**ADDRESSES:** Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission’s Internet comment form (<http://www.sec.gov/rules/proposed.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number S7-21-18 on the subject line.

Paper comments:

- Send paper comments to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number S7-21-18. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/proposed.shtml>). Comments are also available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. All comments received will be posted without change. Persons submitting comments are cautioned that the Commission does not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make publicly available.

Studies, memoranda, or other substantive items may be added by the Commission or staff to the comment file during this rulemaking. A notification of the inclusion in the comment file of any such materials will be made available on the Commission's website. To ensure direct electronic receipt of such notifications, sign up through the "Stay Connected" option at [www.sec.gov](http://www.sec.gov) to receive notifications by email.

**FOR FURTHER INFORMATION CONTACT:** Michael A. Macchiaroli, Associate Director, at (202) 551-5525; Thomas K. McGowan, Associate Director, at (202) 551-5521; Randall W. Roy, Deputy Associate Director, at (202) 551-5522; Timothy C. Fox, Branch Chief, at (202) 551-5687; or Rose Russo Wells, Senior Counsel, at (202) 551-5527, Office of Financial Responsibility, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-7010.

## SUPPLEMENTARY INFORMATION:

### I. BACKGROUND

Most broker-dealers registered with the Commission must file annual reports with the Commission.<sup>1</sup> The annual reports must include a financial report and either a compliance report or an exemption report.<sup>2</sup> In addition, the annual reports generally must include reports prepared by an independent public accountant covering the financial report and, as applicable, the compliance or exemption report.<sup>3</sup> The independent public accountant must be registered with the Public Company Accounting Oversight Board (“PCAOB”) if required by the Sarbanes-Oxley Act of 2002.<sup>4</sup> In addition, the accountant’s reports must be prepared in accordance with standards of the PCAOB.<sup>5</sup>

However, a broker-dealer is not required to engage an independent public accountant to provide the accountant’s reports if, since the date of the registration of the broker-dealer with the Commission or of the previous annual reports filed with the Commission, the securities business of the broker-dealer “has been limited to acting as broker (agent) for *the* issuer in soliciting subscriptions for securities of the issuer, the broker has promptly transmitted to the issuer all funds and promptly delivered to the subscriber all securities received in connection with the

---

<sup>1</sup> 15 U.S.C. 78q(a)(1); 15 U.S.C. 78q(e)(1)(A); 17 CFR 240.17a-5(d). *See also* 17 CFR 240.17a-5(d)(1)(iii) and (iv) (setting forth the limited circumstances under which the annual reports need not be filed).

<sup>2</sup> *See* 17 CFR 240.17a-5(d)(1). The financial report must include a statement of financial condition, a statement of income, a statement of cash flows, a statement of changes in stockholders’ or partners’ or sole proprietor’s equity, a statement of changes in liabilities subordinated to claims of general creditors, and certain supporting schedules. 17 CFR 240.17a-5(d)(2). A broker-dealer that does not claim it was exempt from 17 CFR 240.15c3-3 (“Rule 15c3-3”) throughout the most recent fiscal year must file the compliance report, and a broker-dealer that does claim it was exempt from Rule 15c3-3 throughout the most recent fiscal year must file the exemption report. 17 CFR 240.17a-5(d)(1)(i)(B)(1) and (2). The compliance report must contain statements about the broker-dealer’s internal controls over, and compliance with, certain financial responsibility rules. 17 CFR 240.17a-5(d)(3). The exemption report must contain statements about the broker-dealer’s exemption from Rule 15c3-3. 17 CFR 240.17a-5(d)(4).

<sup>3</sup> 17 CFR 240.17a-5(d)(1)(i)(C).

<sup>4</sup> Pub. L. No. 107-204, 116 Stat. 745 (2002). *See* 17 CFR 240.17a-5(f)(1).

<sup>5</sup> 17 CFR 240.17a-5(g).

transaction, and the broker has not otherwise held funds or securities for or owed money or securities to customers[.]”<sup>6</sup>

The Commission first adopted the exemption in 1957.<sup>7</sup> At that time, the pertinent rule text provided that the exemption was available to a broker-dealer if “his or its securities business has been limited to acting as broker (agent) for the issuer in soliciting subscriptions for securities of such issuer, said broker has promptly transmitted to such issuer all funds...”<sup>8</sup> The Commission stated in the adopting release that the “exemption is available to a broker who, from the date of his previous report, has limited his securities business to soliciting subscriptions as an agent for issuers, has transmitted funds and securities promptly and has not otherwise held funds or securities for or owed money or securities to customers (*i.e.* one who would have been exempt during that entire period from the Commission's aggregate-indebtedness-net-capital § 240.15c3-1 (Rule 15c3-1) by reason of paragraph (b)(1) thereof).”<sup>9</sup>

In 1975, as part of a set of comprehensive amendments to broker-dealer reporting rules, the Commission amended the text of the exemption to provide, in pertinent part, that the exemption was available if “the securities business of such broker or dealer has been limited to acting as broker (agent) for the issuer in soliciting subscriptions for securities of such issuer...”<sup>10</sup> The Commission did not explain the purpose of the amendment. In 1977, the

---

<sup>6</sup> 17 CFR 240.17a-5(e)(1)(i)(A) (emphasis added).

<sup>7</sup> *See Registration of Brokers and Dealers; Preservation of Records and Reports of Certain Stabilizing Activities*, 22 FR 6492 (Aug. 14, 1957).

<sup>8</sup> *Id.* at 6493.

<sup>9</sup> *Id.*

<sup>10</sup> *See Announcement of the Adoption of the FOCUS Report, a Program to Streamline the Financial and Operational Reporting of Brokers and Dealers, Including Amendments to Rule 17a-4, Rule 17a-5 and Related Form X-17a-5, Rule 17a-10 and Related Form X-17a-10, Rule 17a-11 and Related Form X-17a-11, and Rule 17a-20 and Related Form X-17a-20 Under the Securities Exchange Act Of 1934, and the Approval of Plans Submitted Pursuant to Rule 17a-5, Rule 17a-10 and Rule 17a-20*, Exchange Act Release No. 11935, Dec. 17, 1975, 40 FR 59706 (Dec. 30, 1975). *See also Proposal to Adopt the FOCUS Report, a Program to Streamline the Financial and*

Commission again amended the text of the exemption to modify the phrase “has been limited to acting as broker (agent) for *the* issuer” to “has been limited to acting as broker (agent) for *an* issuer.”<sup>11</sup> Although the Commission did not explain the purpose of the amendment in the adopting release, the Commission later clarified that the exemption applies only to a broker-dealer acting as an agent for a single issuer.<sup>12</sup>

While the 1977 amendment was published in the Federal Register, an error was made when printing the amended rules in the Code of Federal Regulations. In particular, the Code of Federal Regulations continued to describe the exemption as limited to a broker that acts as an agent “for *the* issuer.”<sup>13</sup>

Finally, in 2013, the exemption provision was amended again, but solely to modernize certain terms in the rule text.<sup>14</sup> However, in making these amendments, the release used the rule text as then published in the Code of Federal Regulations and, therefore, inadvertently re-introduced the language of the exemption as it existed prior to 1977 (*i.e.*, amended the exemption provision to provide that the exemption applied if the broker solicited subscriptions for “the issuer” rather than “an issuer”). Today, the Commission is proposing an amendment to correct that error and to clarify that the exemption applies to a broker-dealer whose securities business

---

*Operational Reporting of Brokers and Dealers, Including Amendments to Rule 17a-4, Rule 17a-5 and Related Form X-17a-5, Rule 17a-10 and Related Form X-17a-10, Rule 17a-11 and Related Form X-17a-11, and Rule 17a-20 and Related Form X-17a-20 Under the Securities Exchange Act Of 1934*, Exchange Act Release No. 11748 (Oct. 16, 1975), 40 FR 51060 (Nov. 3, 1975).

<sup>11</sup> See *FOCUS Reporting System*, Exchange Act Release No. 13462 (Apr. 22, 1977), 42 FR 23786, 23788 (May 10, 1977) (emphasis added).

<sup>12</sup> See *In the Matter of the Application of First Nevada Securities, Inc.*, Exchange Act Release No. 30774, at n.6 (June 4, 1992).

<sup>13</sup> See, e.g., *In the Matter of the Application of Sharemaster*, Exchange Act Release No. 83138 (Apr. 30, 2018) (“*Sharemaster*”).

<sup>14</sup> See *Broker-Dealer Reports*, Exchange Act Release No. 70073 (Jul. 30, 2013), 78 FR 51910, 51943 (Aug. 21, 2013). For example, the amendment replaced the phrase “such broker or dealer” with “the broker or dealer.”

has been limited to acting as broker (agent) for a single issuer in soliciting subscriptions for securities of that issuer.

## **II. PROPOSED AMENDMENT TO RULE 17a-5**

Section 17(e)(1)(A) of the Exchange Act, among other things, requires a registered broker-dealer to file certain audited financial statements annually with the Commission.<sup>15</sup> Section 17(e)(1)(C) of the Exchange Act provides that the Commission may exempt any registered broker-dealer from any provision of Section 17(e)(1) “if the Commission determines that the exemption is consistent with the public interest and the protection of investors.”<sup>16</sup> The Commission adopted Rule 17a-5 under the Exchange Act (“Rule 17a-5”), in part, under these provisions.

The Commission is proposing to amend the exemption provision in paragraph (e)(1)(i)(A) of Rule 17a-5 to clarify in the rule text that the exemption is limited to a broker-dealer that acts as an agent for a single issuer. Specifically, the Commission is proposing to replace the phrase “has been limited to acting as broker (agent) for the issuer in soliciting subscriptions for securities of the issuer” with the phrase “has been limited to acting as broker (agent) for a single issuer in soliciting subscriptions for securities of that issuer.”

Broker-dealers serve an important capital formation role by performing numerous services. These services include, among others, underwriting securities issuances, facilitating purchases and sales of securities on behalf of customers, making markets in securities, participating in private placements of securities, and providing investment research and recommendations. The annual reports broker-dealers file with the Commission are used by the Commission and the broker-dealer’s designated examining authority to monitor the financial and

---

<sup>15</sup> See 15 U.S.C. 78q(e)(1)(A).

<sup>16</sup> See 15 U.S.C. 78q(e)(1)(C).

operational condition of the broker-dealer. The annual reports also are one of the primary means of monitoring compliance with the Commission’s broker-dealer financial responsibility rules. The requirement that the annual reports be certified by an independent public accountant is intended to enhance the reliability of the information filed by the broker-dealer, including information relevant to its financial condition and ability to continue as a going concern. This also benefits investors who are customers or potential customers of the broker-dealer and who do not have access to the same level of information about the financial condition and operations of the broker-dealer as the independent public accountant performing the audit. These investors rely on the independent public accountant to audit this information, which – as noted above – is relevant to the broker-dealer’s financial condition and ability to continue as a going concern.

This very limited exemption to the requirement that a broker-dealer’s annual reports be certified by an independent public accountant is consistent with the objectives of the rule. In particular, the exemption applies when the broker-dealer’s sole reason for being registered with the Commission as a broker-dealer is to act as an agent to solicit subscriptions for the securities of a single issuer—typically an affiliate of the broker-dealer.<sup>17</sup> In this case, the issuer is the broker-dealer’s only customer. Due to this special relationship, the issuer likely has the ability to access sufficient information about the financial condition and operations of the broker-dealer to make an informed decision about continuing to use the broker-dealer to effect transactions in its securities.<sup>18</sup> Therefore, requiring that an independent public accountant audit this information would not provide the single customer of the broker-dealer (*i.e.*, the issuer) a meaningful benefit.

---

<sup>17</sup> See also 17 CFR 240.3a4-1 (which provides a limited safe harbor from the requirement to register as a broker-dealer for certain associated persons of an issuer that participate in the sale of the securities of the issuer under certain enumerated conditions).

<sup>18</sup> See *Sharemaster* at 10 (“It is the limited nature of the business of a broker that solicits subscriptions for a single issuer and the relationship between the broker and that issuer, such as when the broker is engaged only in underwriting the issues of its parent that renders an audit requirement on the broker-dealer unnecessary.”).

The risk of harm from not requiring that an independent public accountant audit the information would be mitigated by the single customer's ability to access any necessary information regarding the broker-dealer's operational and financial condition, as noted above. Moreover, any harm would be limited to the broker-dealer's single customer. Further, based on the annual reports broker-dealers filed with the Commission, it appears that only three broker-dealers have relied on the exemption in the past year.

### **III. REQUEST FOR COMMENT**

The Commission generally requests comment on all aspects of the proposal. This request for comment is limited to the proposed rule amendment; the Commission is not requesting comment on any other aspect of Rule 17a-5.

### **IV. PAPERWORK REDUCTION ACT**

The proposed rule amendment would clarify the scope of an existing exemption available to certain broker-dealers from the requirement to engage an independent public accountant to provide the reports required under paragraph (d)(1)(i)(C) of Rule 17a-5.<sup>19</sup> The proposed rule amendment does not create any new, or revise any existing, collection of information pursuant to the Paperwork Reduction Act of 1995.<sup>20</sup> Accordingly, no information has been submitted to the Office of Management and Budget for review.

The Commission requests comment on the assertion that the proposed rule amendment will not create any new, or revise any existing, collection of information pursuant to the Paperwork Reduction Act.

---

<sup>19</sup> See 17 CFR 240.17a-5(d)(1)(i)(C).

<sup>20</sup> 44 U.S.C. 3501 *et seq.*

## V. ECONOMIC ANALYSIS

The Commission is mindful of the costs imposed by, and the benefits obtained from, its rules. Whenever the Commission engages in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, Section 3(f) of the Exchange Act requires the Commission to consider whether the action would promote efficiency, competition, and capital formation, in addition to the protection of investors. Further, when engaged in rulemaking under the Exchange Act, Section 23(a)(2) of the Exchange Act requires the Commission to consider the impact such rules would have on competition. Section 23(a)(2) of the Exchange Act also prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. The following analysis considers the potential economic effects that may result from the proposed rule amendment, including the benefits and costs to market participants as well as the broader implications of the proposal for efficiency, competition, and capital formation.

As noted above, broker-dealers serve an important role in capital formation by performing numerous services, including with respect to the distribution of securities. Broker-dealer annual reports are one of the primary means of monitoring compliance with the Commission's broker-dealer financial responsibility rules, and the requirement that the annual reports be certified by an independent public accountant is intended to help enhance the reliability of the information filed by the broker-dealer. The exemption in paragraph (e)(1)(i)(A) of Rule 17a-5 is designed to streamline regulatory compliance for certain broker-dealers by permitting broker-dealers that underwrite offerings by a single issuer – typically an affiliate of the broker-dealer – to do so without needing to meet this requirement.

With respect to the baseline, broker-dealers rarely rely on the very limited exemption in paragraph (e)(1)(i)(A) of Rule 17a-5. Staff analysis of annual reports filed by broker-dealers revealed that only three broker-dealers – out of approximately 4,000 registered with the Commission – relied on the exemption in the last year. The low level of use suggests that broker-dealers generally do not avail themselves of the existing exemption to compete with one another or to improve the efficiency of their underwriting activities.

The Commission recognizes the value of requiring that broker-dealer annual reports be certified by an independent public accountant. However, when a broker-dealer is acting solely as an agent for a single issuer's securities, typically an affiliate, the issuer is likely to have sufficient information about the broker-dealer's financial and operational condition. In that case, there would be minimal benefit in a requirement that the broker-dealer's annual reports be certified by an independent public accountant. At the same time, a broker-dealer required to obtain certification for its annual reports could bear significant costs to do so.<sup>21</sup>

In cases where a broker-dealer is acting solely as an agent for a single unaffiliated issuer, the benefits of certification are likely to be higher because the larger degree of information asymmetry between the broker-dealer and the unaffiliated issuer makes third-party certification more valuable. The Commission believes the likelihood of such a narrow arrangement between a broker-dealer and a single unaffiliated issuer is low because for such a broker-dealer, the costs of certification are likely lower than the expected benefits from acting as an agent for additional unaffiliated issuers.

The Commission expects the amendment to benefit issuers that rely on broker-dealers to underwrite securities offerings by providing increased regulatory certainty about a broker-

---

<sup>21</sup> According to one broker-dealer, the requirement for an audit prepared by a PCAOB-registered accountant was \$2,800 in 2010. *See Sharemaster*, at n. 4. Adjusting this amount for inflation yields approximately \$3,200 in 2018 (inflation calculator available at [https://www.bls.gov/data/inflation\\_calculator.htm](https://www.bls.gov/data/inflation_calculator.htm)).

dealer's obligation to have its annual reports certified by an independent public accountant when the broker-dealer acts as an agent for multiple issuers. This will benefit issuers by helping ensure that broker-dealers do not inappropriately rely on the exemption in paragraph (e)(1)(i)(A) of Rule 17a-5. When the broker-dealer is not acting solely as an agent for a single affiliate's securities, the benefits of certification are likely to be more substantial because the issuers are less likely to have sufficient information about the broker-dealer's financial condition.

The Commission acknowledges that, to the extent this proposal limits use of the exemption, broker-dealers that would no longer be able to use the exemption in the future could bear costs as a result of the proposed amendment. For such a broker-dealer, the Commission believes the cost of a small broker-dealer obtaining certification of its annual reports by an independent public accountant in accordance with paragraph (d)(1)(i)(C) of Rule 17a-5 could be approximately \$3,200 per year.<sup>22</sup> Based on the low reliance on the exemption currently, and the expectation that the number of broker-dealers relying on the exemption will not materially increase or decrease as a result of the amendment, the overall economic impact of the proposal is likely to be small.

The Commission expects the proposed amendment to have only a marginal impact on efficiency, competition, and capital formation. This assessment is primarily based on the belief that the amendment does not revise the scope of the exemption or change current practice and that the exemption is claimed by only a few broker-dealers. The Commission nevertheless acknowledges that the proposed amendment may marginally impair capital formation if it prompts broker-dealers to reduce underwriting activity or to increase the price of underwriting activities for potential issuers.

---

<sup>22</sup> *Id.*

The Commission considered several alternatives in terms of the scope of the exemption. First, the Commission considered broadening the scope of the exemption to include broker-dealers whose securities business is limited to acting as an agent for multiple issuers. Staff analysis of information provided by broker-dealers indicates that a substantial number of registered broker-dealers underwrite corporate securities or are selling group participants for corporate securities and may otherwise be eligible to take advantage of the exemption if its scope were broadened in this way.<sup>23</sup>

Rule 17a-5 provides only two exemptions from the requirement that broker-dealer annual reports be certified by an independent public accountant.<sup>24</sup> The Commission has provided for only these very limited exemptions from the requirement that annual reports of broker-dealers be audited due to the importance of reliable financial and operational information concerning registered broker-dealers for investor protection and the integrity of the capital markets. Broadening the exemption could benefit broker-dealers by no longer requiring them to engage independent public accountants when they act as an agent for multiple issuers in soliciting subscriptions for securities and thereby reducing their costs. However, an alternative that broadens these exceptions could impose costs on issuers to the extent that making the certification by the independent public accountant voluntary for broker-dealers that serve multiple issuers reduces the reliability of these broker-dealers' annual reports.

---

<sup>23</sup> Commission staff analysis of Form BD data indicates that 971 registered broker-dealers reported engaging in, or expecting to engage in, the underwriting of securities at the end of 2017.

<sup>24</sup> One exemption is the "single issuer" exemption provided for in paragraph (e)(1)(i)(A) of Rule 17a-5. The other exemption is contained in paragraph (e)(1)(i)(B) of Rule 17a-5. The second exemption applies to broker-dealers whose securities business is "limited to buying and selling evidences of indebtedness secured by mortgage, deed of trust, or other lien upon real estate or leasehold interests, and the broker or dealer has not carried any margin account, credit balance, or security for any securities customer." Staff analysis of annual reports filed by broker-dealers revealed that only one broker-dealer claimed this exemption in the last year.

Given the significance of the verification of a broker-dealer's financial and operational information by an independent public accountant, the Commission is not proposing to broaden the scope of the exemption to include broker-dealers whose securities business is limited to acting as an agent for multiple issuers. When a broker-dealer acts as an agent on behalf of an issuer, the financial condition of the broker-dealer is important to the issuer because if a broker-dealer is financially constrained, it may be less able to bear the risks associated with underwriting activities, such as holding securities in inventory. If a broker-dealer acts as an agent on behalf of multiple issuers, its financial condition is important to capital formation for multiple issuers, and so the benefits of certification are likely higher for the broker-dealer. Moreover, the Commission notes that the benefits to broker-dealers from such an alternative may be limited by competitive effects, because an issuer that is concerned about the reliability of a broker-dealer's financial statements may choose to hire a broker-dealer with certified annual reports to act as its agent.

Second, the Commission considered eliminating the exemption. While the Commission is mindful of the significance of broker-dealer audits, as explained above, the Commission believes that the cost of this alternative to broker-dealers who are now eligible to take advantage of the exemption does not justify the benefits that would accrue to the broker-dealer's single customer, typically an affiliate of the broker-dealer, as a result of an audit. Therefore, the Commission preliminarily believes the exemption should continue to be available only where a broker-dealer is acting as an agent for a single issuer in soliciting subscriptions for securities of that issuer.

Finally, the Commission considered further specifying that the limited exemption in paragraph (e)(1)(i)(A) of Rule 17a-5 would apply only if the broker-dealer were engaged in underwriting the securities of an affiliate. While this alternative would narrow the limited

exemption, based on its observation of broker-dealers' use of this exemption to date, the Commission does not believe the benefits yielded by narrowing the exemption would be substantial.

## **VI. REGULATORY FLEXIBILITY ACT CERTIFICATION**

Section 3(a) of the Regulatory Flexibility Act requires the Commission to undertake an initial regulatory flexibility analysis of the impact of the proposed rule on small entities unless the Commission certifies that the amendments, if adopted, would not have a significant economic impact on a substantial number of small entities. As discussed above, the proposed rule would not change the status quo in terms of the broker-dealers that would or would not qualify for the exemption from paragraph (d)(1)(i)(C) of Rule 17a-5.<sup>25</sup> For additional discussion of the impact of the proposal (including on small entities), please see section V above. The Commission hereby certifies, pursuant to 5 U.S.C. 605(b), that the proposed amendment to Rule 17a-5, if adopted, would not have a significant economic impact on a substantial number of small entities.

The Commission encourages written comments regarding this certification. The Commission solicits comment as to whether the proposed amendments could have an effect that the Commission has not considered and requests that commenters describe the nature of any impact on small entities and provide empirical data to support the extent of the impact.

## **VII. CONSIDERATION OF IMPACT ON THE ECONOMY**

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,<sup>26</sup> a rule is “major” if it has resulted, or is likely to result, in:

- an annual effect on the economy of \$100 million or more;

---

<sup>25</sup> See 17 CFR 240.17a-5(d)(1)(i)(C).

<sup>26</sup> Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

- a major increase in costs or prices for consumers or individual industries; or
- significant adverse effects on competition, investment, or innovation.

The Commission requests comment on the potential impact of the proposed rule on the economy on an annual basis. The Commission requests that commenters provide empirical data and other factual support for their views.

### **VIII. STATUTORY AUTHORITY**

The Commission is proposing an amendment to Rule 17a-5 under the Exchange Act (17 CFR 240.17a-5) pursuant to the authority conferred by Exchange Act Sections 17(e)(1)(A), 17(e)(1)(C), and 36.<sup>27</sup>

#### **List of Subjects in 17 CFR Part 240**

Brokers, Reporting and recordkeeping requirements, Securities.

#### **Text of Proposed Rules**

In accordance with the foregoing, the Commission proposes that Title 17, Chapter II of the Code of Federal Regulation be amended as follows.

### **PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934**

1. The authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u-5, 78w, 78x, 78ll, 78mm, 79q, 79t, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4 and 80b-11, unless otherwise noted.

\* \* \* \* \*

---

<sup>27</sup> 15 U.S.C. 78q(e)(1)(A); 15 U.S.C. 78q(e)(1)(C); 15 U.S.C. 78mm.

2. Amend §240.17a-5 by revising paragraph (e) to read as follows.

**§240.17a-5 Reports to be made by certain brokers and dealers.**

\* \* \* \* \*

(e) Nature and form of reports.

(1)(i) The broker or dealer is not required to engage an independent public accountant to provide the reports required under paragraph (d)(1)(i)(C) of this section if, since the date of the registration of the broker or dealer under section 15 of the Act (15 U.S.C. 78o) or of the previous annual reports filed under paragraph (d) of this section:

(A) The securities business of the broker or dealer has been limited to acting as broker (agent) for a single issuer in soliciting subscriptions for securities of that issuer, the broker has promptly transmitted to the issuer all funds and promptly delivered to the subscriber all securities received in connection with the transaction, and the broker has not otherwise held funds or securities for or owed money or securities to customers; or

\* \* \* \* \*

By the Commission

Brent J. Fields  
Secretary

Dated: September 20, 2018